IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.680 to 683 of 2007
in MP NO. 1 of 2002

The Commissioner of Income Tax
Chennai. .. Appellant in all appeals

Vs.

The Vellore Electric Corporation Ltd.
No.338, Ambigammal Street
Alwarpet, Chennai 600 018. .. Respondent in all appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 15.3.2005 made in ITA Nos.246, 247, 248 and 249/Mds/2002 for the assessment years 1983-84 to 1986-87 respectively in ITA NOS. tr 554 to 557/01-02A III order dated 28.12.2001 for be assessment year 1983-84 to 1986-87 on the file of the Commissioner income Tax (Appeals) III Chennai 34 against in PAN/GIR NO. 11-T dated on 30.03.2001 assessment year 198-84, 1984-85, 1985-86 and 1986-97 respectively on the file of the Deputy Commissioenr of Income Tax City Circle III (1) Chennai

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For Appellant : Mr.J.Narayanasamy, Jr.S.C.

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J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal dated 15.3.2005 made in ITA Nos.246, 247, 248 and 249/Mds/2002 for the assessment years 1983-84 to 1986-87 respectively, raising the following substantial questions of law.

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"(a) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the

reopening of the assessments is null and void as per the provisions of Section 150 of the IT Act?

(b) Whether in the facts and circumstances of the case, the Tribunal was right in applying the ratio of decision of the Apex Court in 254 ITR 772 and hold that reopening of the assessment is barred by limitation and null and void as per the provisions of Section 150 of the IT Act?

(c) Whether on the facts and in the circumstances of the case, the compensation and interest amounts received by the assessee as per the apex court decision dated 6.1.1995 can be assessed to tax in the year of receipt?

2. The brief facts that led to the filing of the above appeal are as under.

The assessee was in the business of distribution of electricity. The Government of Tamil Nadu took over the assessee company by order 7.1.1974. With respect to the grant of compensation and its quantum, the Supreme Court by order dated 6.1.1995 fixed Rs.51,45,536/- as compensation and Rs.59,14,553/- as interest, totalling to Rs.1,10,60,089/-. The Assessing Officer, after issuing notice under Section 148 of the Act and giving opportunity to the assessee, assessed the interest accrued in every year on compensation, invoking Section 150 of the Act and completed the reassessment proceedings. Against the same, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer. Aggrieved by the same, the assessee preferred appeals before the Income Tax Appellate Tribunal. The Tribunal following the decision of the Apex Court in K.S.SHARMA v. INCOME TAX OFFICER (254 ITR 772), allowed the appeals. Hence, the present appeals.

3. The learned Standing Counsel appearing for the Revenue fairly concedes that the issues raised in the above appeals are covered by the decision of this Court in COMMISSIONER OF INCOME TAX v. VELLORE ELECTRIC CORPORATION LTD. (287 ITR 50).

4. In COMMISSIONER OF INCOME TAX v. VELLORE ELECTRIC CORPORATION LTD. (287 ITR 50), this Court has held as follows:

"... The Tribunal while discussing the issue has relied on a decision of the Supreme Court in the case of K.M.SHARMAVS. INCOME-TAX OFFICER reported in (2002) 254 ITR 772 and very elaborately extracted the order of the Supreme Court. In the said case, the three judges Bench

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of the Supreme Court has categorically held that the plain language of Sub-section (2) of Section 150 clearly restricts the application of sub-section (1) to enable the authorities to reopen the assessments which have not already become final on the expiry of the period of limitation prescribed under Section 149. Sub-section (2), in placing an embargo on reopening of assessments, which have attained finality on the expiry of the period of limitation prescribed under Section 149, refers to the whole of sub-section 1, intending thereby to insulate all assessments which have become final and may have been found liable for re-assessment or re-computation on the basis of either orders in proceedings under the Income-tax Act or orders of Courts passed under any other law. The Supreme Court further held that the provisions of Section 150(1) as amended with effect from April 1, 1989, did not enable the authorities to reopen assessments, which had become final due to the bar of limitation prior to April 1,1989, and this position was equally applicable to re-assessments proposed on the basis of orders passed under the Income-tax Act or under any other law. The proceedings which had attained finality under existing law due to bar of limitation cannot be held to be reopened for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings which had already concluded and attained finality.

4. The above judgment will squarely answer the issue against the revenue and as such we are of the view that the order of the Tribunal, which followed the decision of the Supreme Court, requires no interference and accordingly the appeals stand dismissed."

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4. In view of the above settled proposition, we do not find any substantial question of law that arises for our consideration. Accordingly, the appeals are dismissed. Consequently, M.P.Nos.1 of 2007 are dismissed.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar
Income Tax Appellate (SMC)
Tribunal, Madras D Bench
Chennai

2. The Commissioner of Income Tax (Appeals) III
Chennai 34

3. The Deputy Commissioner of Income Tax
City Circle III (1) Chenai

4. The Commissioner of Income Tax
Chennai

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 35685

asm(co)
nm(29.06.07)

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